IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No.10698 of 2005
Date of Decision: 11.5.2007

Sohan Singh Vs. State of Punjab and others

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Present : Mr. M.S. Bedi, Advocate for the petitioner.
Mr. N.D.S. Mann, Addl.A.G. Punjab.
Mr. A.K. Mahajan, Advocate for respondent no.5.

CORAM : HON'BLE MR.JUSTICE P. SATHASIVAM
HON'BLE MR.JUSTICE RAJIVE BHALLA

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1. Whether Reporters of Local Newspapers may be allowed to see the judgement ?
2. To be referred to the Reporters or not ?
3. Whether the judgement should be reported in the Digest ?

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RAJIVE BHALLA, J

Prayer in the present writ petition is for quashing the order dated 21.4.2005 passed by the Financial Commissioner and Secretary to Government Punjab, Department of Rural Development and Panchayats, cancelling the order of the government dated 9.7.1996, granting sanction to an exchange of land proposed by the Gram Panchayat, vide its resolution dated 7.4.1994 with the land of the petitioner.

Gram Panchayat, Kalanour,respondent no.5, passed a resolution dated 7.4.1994,proposing to exchange its land measuring 2 Marlas 7 Sarsai (from West to East side) in Had Bast No.103 Khewat

No.994, Khatouni No.1508, Khasra No.669 out of total area measuring 19 kanals 10 marlas (Gair Mumkin) with the land of petitioner measuring 5 Marlas (West to East 2.1/2 karams and North to South 18 Karams) comprising Khewat No.935, Khatouni No.1410, Khasra No.674//1/1/1/2 out of total area of 1 Kanal 5 Marla (Gair Mumkin). Vide order dated 9.7.1996, the Governor of Punjab accorded sanction to the exchange under Rule 5 of the Punjab Village Common Lands (Regulations) Rules, 1964, with a view to provide a passage to the general public, in public interest. Thereafter, a mutation reflecting the change of ownership was sanctioned and possessions were exchanged.

Pursuant to a complaint, received by the authorities, a fact finding enquiry was initiated. The Financial Commissioner and Secretary, Punjab Government, Rural Development and Panchayats Department, vide order dated 21.4.2005, cancelled the sanction for exchange.

Counsel for the petitioner contends that the merits of the cancellation apart, the impugned order is void as, it was passed without calling upon the petitioner to show cause against the proposed cancellation. It is contended that as the exchange stood sanctioned and concluded, the Financial Commissioner should have called upon the petitioner, to show cause against the proposed cancellation. As no such notice was issued the impugned order is void.

Counsel for the State of Punjab, is unable to deny that a show cause notice was ever issued or served upon the petitioner.

Counsel for the Gram Panchayat, on the other hand states that an enquiry was entrusted to the Divisional Deputy Director, Rural Development and Panchayat Department, Jalandhar. On 27.1.2005, the

petitioner was served with a notice, calling upon him to remain present on the spot, as the aforementioned officer was to inspect the land obtained in exchange. It is contended that after enquiry, the Divisional Deputy Director, recommended cancellation of the exchange. It is argued that as the petitioner was present during the physical inspection of the exchanged land, the principles of natural justice stood satisfied and, therefore, the petitioner's contention being factually incorrect and the present petition be dismissed.

We have heard learned counsel for the parties and perused the paper book.

The merits of the cancellation apart, it is not denied that prior to the order dated 21.4.2005, the Financial Commissioner did not call upon the petitioner, to show cause against the proposed cancellation of the exchange. Contention raised by counsel for the Gram Panchayat, that the petitioner was associated by the Divisional Deputy Director, when he inspected the land is no substitute for the issuance of a show cause notice. It is settled law that where a proposed order would visit a person with civil consequences, service of a show cause notice is a sine qua non to the passing of such an order.

As no show cause notice was ever issued or served upon the petitioner, the order dated 21.4.2005 is void being violative of the principles of natural justice. Consequently, the order dated 21.4.2005 is set aside and the matter is remitted to the Financial Commissioner and the Secretary, Punjab Government, Rural Development and Panchayats Department to decide the question of cancellation of the sanction granted on 9.7.1996, afresh, after serving a show cause notice upon the petitioner. The petitioner

would be at liberty, to raise all such pleas as may be available to him in accordance with law. The said exercise be carried out within a period of two months from the date of receipt of certified copy of this order.

Nothing stated herein shall be construed to be an expression of opinion on the merits of the case.

The present petition stands disposed of with no order as to costs.

(RAJIVE BHALLA)
JUDGE

11.5.2007
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(P. SATHASIVAM)
JUDGE